

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
v.)	2:12-CR-20-MHT
)	
)	
)	
CHIQUITA SMITH,)	

**AMENDED
SENTENCING MEMORANDUM**

COMES NOW, the Defendant, Chiquita Smith, by and through the undersigned counsel, J. Carlton Taylor, and submits this her Amended Sentencing Memorandum and as ground therefore would show unto this Honorable Court as follows:

The Defendant plead guilty to:

Count 1: Conspiracy to Defraud the Government with Respect to Claims [18 U.S.C. § 286] - NMT 10 years, NMT 3 years Supervised Release, NMT \$250,000 fine, a Class C Felony, \$100 AF

Count 2: Fraud with Identification Documents, Aiding and Abetting [18 U.S.C. §§ 1028(a)(7) and (b)(1)(D) and 2] - NMT 15 years, NMT 3 years Supervised Release, NMT \$250,000 fine, a Class C Felony, \$100 AF

PLEA AGREEMENT:

The defendant entered into a Plea Agreement with the Government which calls for the following provisions:

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offenses charged in Count 1 and two of the Indictment, the attorney for the Government will agree that a two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a)

for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, and if the defendant otherwise qualifies, the Government will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E 1.1 (b). Determination of whether the defendant met her obligation to qualify for the reduction pursuant to U.S.S.G. § 3E 1.1 is at the sole discretion of the Government.

2. The Government reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offense and the defendant's background.
3. The parties have reached no agreement on any other Guidelines issues.
4. The Government agrees that a sentence no greater than the middle of the applicable guideline range would be appropriate in this case.
5. The Government agrees to dismiss Counts 3 through 8 of the Indictment.
6. The Government agrees that, at trial, it would be able to establish that the Defendant's participation in this conspiracy was limited to helping obtain personal identifying information from the State of Alabama Department of Human Resources, Vinson Guard Service, Inc., and a Montgomery, Alabama public high school.

(The Defendant would note for the court that certain changes were made to the plea agreement in hand written form, which are represented herein as the agreement of the parties in typed form,)

DEFENDANT'S PROVISIONS

I. The defendant agrees to the following:

a To plead guilty to Counts 1 and 2 of the Indictment.

b. Not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering, or facilitation of any other criminal activity.

Determination of whether defendant's conduct is a violation of this provision is at the complete discretion of the Government.

c. The defendant recognizes that the facts used to determine the defendant's Guidelines offense level and sentence will be found by the Court at sentencing by a preponderance of the evidence and that the Court may consider any reliable evidence, including hearsay.

FACTUAL BASIS

Between on or about June 13, 2010 and March 25, 2011, the defendant willfully entered into a conspiracy with at least two other people to defraud the United States by obtaining and aiding to obtain the payment and allowance of false, fictitious, and fraudulent claims. The goal of the conspiracy was to obtain payments of refunds which were generated by false tax returns containing fraudulent material facts. The false tax returns were filed by other members of the conspiracy. Prior to willfully entering into the conspiracy, the defendant knew of the unlawful purpose of the plan.

Also between on or about June 13, 2010 and March 25, 2011, the defendant knowingly transferred, possessed, and used, without lawful authority, the means of identification of M.M. with the intent to commit, and to aid in connection with the theft of government property. As a result of this offense, the defendant and at least one other conspirator received things of value which totaled \$1,000.00 or more during the period of June 13, 2010 and March 25, 2011. The use of the means of identification of M. M.

travelled affected interstate commerce when it was transmitted as part of a document by electronic means across state lines.

RECOMMENDATION:

The Defendant does not dispute that the United States Probation Office for the Middle District of Alabama has computed the advisory sentencing guideline range as 30-37 months imprisonment, based on a adjusted total offense level of 22 and a criminal history category of I. The Defendant would note that the Government has not filed a Motion for Downward Departure pursuant to U.S.S.G. § 5K1.1 despite the Defendant presenting herself for a proffer with the Government prior to sentencing.

However, the Defendant has objected to the probation office not granting to the Defendant a minimal (or minor) roll in this offense. It is clear from the evidence that has been provided in this matter that the Defendant had only limited contact with the co-defendant who were actually filing the returns in this matter, did not know the overall plan and scheme nor did she file any returns or receive the proceeds therefrom, but also that the Defendant had a long break in contact with the co-defendants and during said time did not participate in any way in the conspiracy. It should be further noted that this is also the basis for the second objection of the calculated loss attributed to this Defendant and the she would aver that the actual loss was not foreseeable by her due to her limited roll in the conspiracy nor would she have any basis for assessing the intended loss. The Defendant would further note as stated in the Presentence Report, the none of the victims/individuals suffered a direct financial loss as a result of the defendants' actions.

The Defendant would also request the Court take into account that the Defendant's parents are disabled. Her father suffers from kidney disease; her mother suffers from gastrointestinal issues, migraine headaches, a fatty liver and ulcers. The information provided by the defendant was confirmed by her mother.

The defendant has never married, but has been in a four year relationship with Rashad Hubbard. Smith has one child from a prior relationship with Terry Peake. Elijah

T. Smith- Peake (4 years of age) resides with the defendant and her parents. Smith reported that the child's father was not court ordered to pay child support, but the child receives a monthly stipend in the amount of \$622 from his father's military disability benefits. It is clear that the Defendant's family, namely her parent, who she cares for as well as her son would be unable to provided for the health, education, support and maintenance of her minor child should the Defendant be incarcerated. Further, there is a high likelihood that the Defendant's parent's health and well being would suffer without her being present to care for their needs. (See Paragraphs 53 & 54 of the Presentence Report.)

Lastly, the Defendant would note that, as shown in the Presentence Report, the Defendant has no prior criminal history. The Defendant would further aver to this Honorable Court that she has "learned her lesson" and will never be involved in this, or any other type of criminal behavior.

The undersigned would aver that based on the totality of the circumstances a downward variance is warranted and that a sentence of 12 months of home detention is sufficient but not greater than necessary to:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.
- as required pursuant to 18 USC §3553(a).

That based of the foregoing argument, the Defendant prays this Honorable Court will take the facts and circumstances surrounding her crime into consideration as well as the Defendant's situation and the direct effect of incarceration on the Defendant and

her family and thereafter Order an appropriate sentence in this matter of 12 months of home detention. The Defendant would aver to the Court that upon consideration of the facts and circumstances, that a sentence of 12 months of home detention would be more than sufficient to meet the factors of 18 USC §3553(a) and the court's finding in *Booker*.

RESPECTFULLY SUBMITTED, this the 20th day of September, 2012

/s/ J. Carlton Taylor
J. CARLTON TAYLOR
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on those individuals listed below, by CM/ECF email electronic service (or by hand delivery), on this the 23rd day of September, 2012.

/s/ J. Carlton Taylor
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